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REMARKS

The present application is a continuation application in which original claims 1-23 were cancelled and new claims 24-43 were added. In response to a Restriction Requirement, claims 36, 37 and 43 were withdrawn.

In an Office Action dated January 27, 2005, the Examiner rejected all claims, but indicated that claim 41 would be allowable if rewritten into independent form. By the present amendment, dependant claim 41 has been cancelled and replaced with new claim 44, which is equivalent to claim 41, rewritten in independent form. As such, claim 44 should be in condition for allowance. New dependant claims 45-57 have been added, which depend from allowable claim 44, and are allowable therewith.

Claim 38

Independent claim 38 stands rejected over the combination of U.S. patent numbers 3,766,975 to Todd and 3,463,140 to Rollor. As noted by the Examiner, the Todd reference fails to provide a phase change material for regeneratively absorbing thermal energy from a hot beverage. The Examiner relies on the Rollor reference to provide the phase change material missing from the Todd reference. In rejecting claims under 35 U.S.C. §103, the Examiner must provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art, or to combine references, to arrive at Applicant's claimed invention. There must be something *in the prior art* that suggests the proposed modification, other than the hindsight gained from knowledge that the inventor choose to combine these particular things in this particular way. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988). The Examiner is also required to make specific findings on a suggestion to combine prior art references. In Re Dembeczak, 175 F.3d 994, 1000-01, 50 USPQ2d 1614, 1617-19 (Fed. Cir. 1999).

Neither Todd nor Rollor provides any motivation for the combination and reconstruction suggested by the Examiner. The Todd reference fails to recognize or suggest the use of a phase change material. Todd does not suggest that any improvement or change to the disclosed drinking receptacle is needed or desirable. The Rollor reference does provide a phase change material, but the construction of the container is completely different than in the present invention or in the Todd reference. Further, Rollor does not suggest that the phase change material from this container should be applied to a

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container such as Todd. Also, Rollor does not suggest that a construction approach, other than the approach disclosed, is necessary or desirable.

Claim 38 requires a liquid receptacle with an inner vessel that is received inside of an outer shell with the upper end of the inner vessel engaging the inner surface of the outer shell. As explained in the application, this construction approach allows insertion of the inner vessel into the outer shell once the phase change material is added. Neither Todd nor Rollor takes such an approach to forming a liquid receptacle.

In light of the above, Applicant respectfully submits that claim 38, as originally filed, is in condition for allowance, along with claims 39, 40 and 42 that depend therefrom.

Claim 24

Independent claim 24 stands rejected over the previously discussed combination of Todd and Rollor, further in view of U.S. Patent No. 1,721,311 to Muenchen. Independent claim 24 requires an inner vessel and a vacuum insulated outer shell with the phase change material disposed in a chamber between the inner vessel and the outer shell. The Muenchen reference, like the Todd reference, fails to provide a phase change material for regeneratively absorbing thermal energy from the liquid and then releasing the thermal energy to the liquid to maintain the temperature of the liquid. Instead, the Muenchen reference is merely design to quickly chill the contents of a container using ice water. As such, Muenchen does not contemplate or suggest a combination with a drinking receptacle, such as Todd or Rollor. The examiner relies on the Muenchen reference to provide a vacuum insulated outer shell. Muenchen merely provides a glass insulator. Such a design is fragile and bulky, as clearly shown by the Muenchen drawings. Attempting to combine the Muenchen glass insulator with the more robust designs of Rollor and Todd would require significant reconstruction of all three devices, leading to a likely nonfunctional design. Neither Rollor or Todd suggest the need for such an outer shell, and their designs do not allow room for an effective vacuum insulated outer shell. In addition, as discussed above, there is no motivation for the combination of the Todd and Rollor references. In light of this, Applicant respectfully submits that claim 24 is in condition for allowance, along with claims 25-37 which depend therefrom.

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Claim 58

New independent claim 58 is a revised version of independent claim 24, providing that the outer layer of the outer shell forms at least part of the outer surface of the electrode receptacle. This further distinguishes the combination suggested by the Examiner, since the Muenchen reference clearly does not provide a vacuum insulated shell that forms part of the outer surface of the vessel.

In light of the above, Applicant respectfully submits that all pending claims are in condition for allowance.

Respectfully submitted,

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